

STATEMENT of ROBERT CHICKS
PRESIDENT of the STOCKBRIDGE-MUNSEE COMMUNITY
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Senate Select Committee on Indian Affairs

Good morning. My name is Robert Chicks and I am the President of the Stockbridge-Munsee Community Band of Mohican Indians. The Stockbridge-Munsee Tribe is located in northeastern Wisconsin. I am also the co-chairman of the National Tribal Leaders Task Force on Land Recovery and I am Secretary for the Midwest Alliance of Sovereign Tribes.

I am here today to provide testimony on an issue critical to Indian country: the taking of land into trust by the United States for the benefit of Indian tribes and Indian people. After a brief introduction, I will address the following points: 1) A brief history of why the United States takes land into trust for Tribes; 2) Why the fulfillment of the Indian Reorganization Act must continue; 3) Why the proposed revised administrative regulations for taking land into trust should be permitted to go into effect; 4) A brief history of land loss on the Stockbridge-Munsee Reservation.

INTRODUCTION

Under section 5 of the Indian Reorganization Act, the Secretary of Interior may take land into trust for the benefit of Indian tribes and individuals. As you are all likely aware, on April 12, 1999, the Bureau of Indian Affairs embarked on a process to revise the regulations governing land-to-trust transactions, found at 25 CFR Part 151. That process became a lengthy one and continues today. The final rule describing the revised regulations was not published until January 16, 2001. After the presidential election, the Bush Administration delayed the effective date of the proposed regulations to April 16, 2001. On April 16, 2001, the Administration again delayed the effective date to August 13, 2001, and sought comments on whether the final rule should be amended in whole or in part or withdrawn in whole or in part. Those comments were due June 15, 2001.

Although many Tribes, including the Stockbridge-Munsee Tribe, criticized the proposed regulations when first issued, the Tribes now realize that the process of revising the regulations has resulted in a final rule that, while less than ideal, essentially preserves the intent of the Indian Reorganization Act ("IRA") while at the same time answering the concerns of various non-tribal third parties. The National Congress of American Indians as well as the Midwest Alliance of Sovereign Tribes have stated their support for the proposed regulations to be permitted to go into effect.

1) A brief history of why the United States takes land into trust for Tribes

In the late 19th century the United States government made a policy decision that sought to end the reservation system of communally held lands. The end of communally held lands meant providing each individual Indian with an allotment that would eventually become alienable. Once all tribal members on a reservation received an allotment, the remaining “surplus” land would be sold. The hope of policy makers was that Indians would assimilate into American society.

The “Allotment Era” was initiated by passage of the Dawes Act in 1887 and continued until the policy was ended in 1934. During those 47 years, the federal government took away over 90 million acres of tribal lands that were previously guaranteed to tribes by treaties and federal law. This was over two thirds of the tribal land base, and over 80% of their value, as the best and most productive lands were the first to be taken. The remaining tribal lands, if any were left, were discontinuous, fractionated, and difficult to use for any economically productive purpose such as grazing or agriculture. The effects of the Allotment Era were devastating to tribal communities, economically and socially, and the effects continue to this day.

The Allotment Era was but one such period. Similarly unjustified tribal land grabs occurred regionally throughout the late 1800’s and into the Termination Period in the 1950’s and 1960’s. Every tribe has a different history, but the theme is the same. The federal government came in and took the lion’s share of precious remaining tribal land away without justification, most often working with the states in order to give the resources to non-Indian state citizens.

In 1934, in the wake of the Merriam Report describing the failure of the Allotment policy and the devastating poverty that existed on reservations, Congress repudiated the Allotment Era philosophy by passing the Indian Reorganization Act. The IRA ended allotment, provided that any existing trust parcels would remain in trust and provided the statutory basis for the United States to take land into trust on behalf of tribes and individual Indians. The IRA is comprehensive legislation intended to rebuild tribal governments, tribal economies, and the tribal land base. One of the chief legislative sponsors of the IRA, Congressman Howard of Nebraska, in 1934, explained rationale for the law as follows:

the land was theirs under titles guaranteed by treaties and law; and when the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became responsible for the damage that has resulted from its faithless guardianship.

Since 1934, the BIA has maintained a very conservative policy for putting land into trust. In the ensuing 65 years, only 8 million of the 90 million acres lost has been returned to the tribes.

2) Why the fulfillment of the Indian Reorganization Act must continue

Land is still going out of trust every day in Indian country, with allotments going out of trust and going onto the state tax rolls. In some years, the amount of land going out of trust exceeds the amount

of land going into trust. An Indian tribe must have its land in trust in order to exercise unquestioned governmental jurisdiction over tribal members. Land placed into trust is a critical part of addressing tribes' need to build self-sustaining communities. The purpose of the IRA was to stop the erosion of tribal land holdings and to help Tribes regain land and improve their social welfare and economic opportunities.

The IRA is a solemn commitment on the part the United States to undo what Congressman Howard described in 1934 as the "misappropriation of the Indian estate." With less than 10 percent of the 90 million lost acres still in non-tribal hands, the IRA's purpose is just as vital as it was in 1934.

The historical asymmetry is startling. In the late 18th and early 19th centuries, greed for land and resources fueled the rapid loss of tribal lands without regard to any moral or equitable considerations. Furthermore, in many cases the wishes of tribal people were ignored and tribes were woefully under compensated. Today, tribes must often re-acquire land with their own funds. If they are lucky enough to do so, the land-to-trust process can be time consuming and expensive itself. Despite the past, now when a tribe wishes to have a re-acquired parcel placed into trust, words like "fair" and "equal" are called out by local non-Indians who do not wish to see land go into trust. The calculation of fair and equal however must include the past as well. The wrongs of the past have left Indian people far short of fairness and still struggling for equality.

The continued fulfillment of the goals of the IRA is vital to the preservation of tribal life and the continuation of tribal nations. The land-to-trust system is a recognition by the federal government of its obligation to correct the historical wrongs of the Allotment Era. The United States cannot, with the wave of a wand, restore all lost tribal lands. However, the tribes and United States together can proceed toward fulfilling their original agreements. That fulfillment will take place within a land-to-trust system that balances the broader historical context of tribes and their land against the present realities of land ownership.

3) Why the proposed revised administrative regulations for taking land into trust should be permitted to go into effect.

The proposed land-to-trust regulations now pending should be permitted to go into effect. As I discussed earlier, the final rule scheduled to go into effect August 13, 2001 answers many of the concerns that various parties have had in the past with the federal process of placing land into trust for Indian tribes: 1) The proposed regulations strike a balance between the interests of tribes and local governments while preserving the land-to-trust process established under 25 U.S.C. § 465; 2) The proposed regulations place higher scrutiny on off-reservation acquisitions; 3) The proposed regulations provide a needed and valuable tool for landless tribes to begin to acquire trust land; 4) The proposed regulations treat land applications for parcels contiguous to existing reservations as off-reservation.

The balance struck by the proposed regulations recognizes the underlying reality that the world we live in is one in which we are becoming more interdependent. Tribes and local governments, therefore, are forced into closer contact. A federal policy that unduly favors one side or the other

unnecessarily makes it more difficult for cooperation and co-existence between tribes and local governments. Any contemplated further consideration of the interests of other non-Indian parties is undue: the proposed regulations strike that balance fairly and equitably while preserving the intent of the IRA.

The letter and spirit of the IRA create a process between the Federal Government and the Tribe. Nothing in the statute suggests that local governments should have any role in the process. The proposed regulation is rigorous enough to ensure that local governments will have significant opportunities to have their interests weighed by the Department when considering a trust acquisition.

There is little doubt that even under the current regulations local governments are receiving an opportunity to make their interests known in a meaningful way. The last fee-to-trust transaction completed by the Stockbridge-Munsee Tribe and the U.S. took over three years. Though a combination of factors caused the delay, one of them included an appeal by a county government that added about 5 months to the process. The county's appeal was only a *single* step in the appeal process (appealing the Superintendent's decision to the Area Office) but still added 5 months to the time the Tribe had to wait. These 5 months were important as the Tribe wanted to use the land to build a waste water treatment facility and new health center. These projects were delayed by the County's appeal and for various financial reasons, time was of the essence.

4) History of Stockbridge-Munsee Community Land Loss

The Stockbridge-Munsee position on the final rule is influenced by its own unique historical perspective. I close by briefly reviewing the history of the Tribe's land loss. In 1856 the Tribe entered into the last of its treaties with the United States, the result of which is the Tribe's current two-township reservation. The Tribe's two townships cover approximately 46,000 acres. Today, the Tribe holds approximately 18,000 acres of that land in trust and owns another 2,500 acres or so in fee simple.

The Tribe felt the consequences of both types of Allotment Era land loss. First, in 1871 Congress passed an Act calling for the sale of 3/4ths of the Stockbridge-Munsee Reservation. The land was heavily timbered and the Congressman representing the Tribe's district owned many lumber mills in the area. He helped get the bill through Congress and profited heavily from the sale. These facts are well documented. The remaining 18 sections continued to be held as trust land until 1906.

Second, in 1906, pursuant to federal legislation, the remaining 18 sections were patented in fee to the tribal membership. In less than 10 years all of the land was out tribal hands, due to unpaid taxes, land sharks and mortgage foreclosures. Many tribal members lived as squatters and a fortunate few purchased fee land within the two townships. The tribal population was in dire economic straits for the next 20 years until the Indian Reorganization Act in 1934. The U.S. government purchased about 1,000 acres for the Tribe and placed it in trust in 1937. The Tribe approved an IRA constitution in

1937. The Tribe regained another 1,200 acres from the BIA in 1948. In 1972 the U.S. provided another 13,000 acres of sub-marginal lands. These lands had been a hold over from Depression-era relief programs that sought to acquire sub marginal lands for Indian tribes. Over the last 25 years, the Tribe has purchased land as it was able and placed it into trust.

The Stockbridge-Munsee Tribe's history presents at least as compelling an example as any Tribe in the country of the past failures of United States' policy with respect to tribal lands. In 1871, the Stockbridge Tribe suffered the sale of heavily forested "surplus" lands earlier than most tribes, causing the Tribe to lose 3/4ths of its already small land base. In 1906, the Tribe's remaining land base was patented in fee to the tribal membership. There was no trust period in place to buffer individual tribal members against loss of land through land fraud, and tax and mortgage foreclosure. After the issuance of fee patents in 1910, many tribal members unwittingly sold their patent for below its value. All of the tribal land base was gone by 1920. The Stockbridge-Munsee land history is a prime example of why the Indian Reorganization Act provides for land to be taken into trust on behalf of tribes.

REVIEW of MAPS

MAP 1 -1856

The Tribe was possessed of its entire two-township Reservation in 1856. The Tribe's land base was 46,080 acres.

MAP 2 - 1875

In 1871, Congress authorized the sale of 3/4ths of the Tribe's Reservation, mostly for its valuable timber. The Act passed in 1871 and within 4 short years the sale was complete and 34,000 acres were taken out of tribal hands.

MAP 3 - 1937 and 1948

In 1937, the BIA purchased the lands indicated in blue and place them into trust for the Tribe. In the 1948 the lands in orange were added.

MAP 4 - 2001

The IRA lands are indicated on Map 3. The yellow lands are in trust and the green parcels are owned in fee by the Tribe. Many of them are pending in the land to trust process.